

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
TAMMY ALLEN, PERSONAL)	
REPRESENTATIVE OF THE ESTATE)	
OF NORMAN ALLEN,)	
)	
Plaintiff,)	
)	
V.)	Civil Action No. 05-11463-DPW
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

UNITED STATES' MOTION TO DISMISS TAMMY ALLEN'S COMPLAINT.

As more fully demonstrated in the accompanying Memorandum in Support, the United States of America respectfully requests that this Court dismiss with prejudice Tammy Allen's (hereinafter "Allen") complaint in the above-captioned matter pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure as this Court lacks subject matter jurisdiction where the Allen has failed to file a timely administrative claim as required by the Federal Tort Claims Act. 28 U.S.C. § 2401(b).

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

Dated: July 22, 2005

/S/ Christopher Alberto
Christopher Alberto
Assistant U.S. Attorney
U.S. Attorney's Office
John Joseph Moakley Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
Tel. No. (617) 748-3311

CERTIFICATE OF SERVICE

I hereby certify that on this day service of the foregoing Motion to Dismiss has been made upon the following by depositing a copy in the United States mail, postage prepaid to:

William Thompson, Esq.
Lubin & Meyer, P.C.
100 City Hall Plaza
Boston, MA 02108

Dated: July 22, 2005

/S/ Christopher Alberto
Christopher Alberto
Assistant U.S. Attorney

CERTIFICATION PURSUANT TO L.R. 7.1 (A)(2)

I hereby certify that on July 22, 2005, I spoke with Attorney William Thompson, attorney for the plaintiff, and informed him of my intention to file this Motion to Dismiss and attempted in good faith to resolve the issues presented.

Dated: July 22, 2005

/S/ Christopher Alberto
Christopher Alberto
Assistant U.S. Attorney